

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0354-OSS-E TCEQ ID: RN105107171 CASE NO.: 35506
RESPONDENT NAME: GILBERT ESPINOSA

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> ONSITE SEWAGE SYSTEM	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 819 Unit B Williams Street, Eden, Concho County

TYPE OF OPERATION: Residential property

SMALL BUSINESS: ☐ Yes ☒ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location or this person.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired April 6, 2009. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. Epifanio Villarreal, Waste Enforcement Section, MC R-13, (361) 825-3425
TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479
Respondent: Mr. Gilbert Espinosa, P.O. Box 594, Eden, Texas 76837
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p> <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review </p> <p>Date of Complaint Relating to this Case:</p> <p>Date of Investigation Relating to this Case: January 10, 2008</p> <p>Date of NOE Relating to this Case: February 7, 2008</p> <p>Background Facts: The EDPRP was filed July 1, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on July 3, 2008. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance. Cleanup of the cesspool has been addressed in a companion case against the property owner (TCEQ Agreed Order 2008-0340-OSS-E, effective August 8, 2008).</p> <p>OSS: Failed to prevent the unauthorized discharge of waste and the prohibited use of a cesspool [30 TEX. ADMIN. CODE § 285.3(i) and TEX. WATER CODE § 26.121].</p>	<p>Total Assessed: \$627</p> <p>Total Deferred: \$0</p> <p> <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset </p> <p>Total Due to General Revenue: \$627</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification N/A</p> <p>Person Compliance History Classification N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s):</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, cease the use of the cesspool and the unauthorized discharge of waste into the cesspool. 2. Within 45 days, submit written certification demonstrating compliance with the Ordering Provision above.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

TCEQ

DATES	Assigned	19-Feb-2008	
	PCW	26-May-2008	Screening 6-Mar-2008 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Gilbert Espinosa		
Reg. Ent. Ref. No.	RN105107171		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35506	No. of Violations	1
Docket No.	2008-0354-OSS-E	Order Type	Findings
Media Program(s)	On-Site Sewage Disposal	Enf. Coordinator	Andrew Hunt
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 **\$250**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement Subtotals 2, 3, & 7 **\$12**

Notes The Respondent has one NOV for same or similar violations during the last five years.

Culpability No 0% Enhancement Subtotal 4 **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 **\$0**

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$1,118
Approx. Cost of Compliance \$5,580
 0% Enhancement* Subtotal 6 **\$0**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal **\$262**

OTHER FACTORS AS JUSTICE MAY REQUIRE 139% Adjustment **\$365**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended adjustment to capture the avoided cost of compliance.

Final Penalty Amount **\$627**

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty **\$627**

DEFERRAL 0% Reduction Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$627**

Screening Date 6-Mar-2008

Docket No. 2008-0354-OSS-E

PCW

Respondent Gilbert Espinosa

Policy Revision 2 (September 2002)

Case ID No. 35506

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105107171

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Andrew Hunt

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The Respondent has one NOV for same or similar violations during the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 6-Mar-2008		Docket No. 2008-0354-OSS-E		PCW																				
Respondent Gilbert Espinosa		<i>Policy Revision 2 (September 2002)</i>																						
Case ID No. 35506		<i>PCW Revision January 29, 2008</i>																						
Reg. Ent. Reference No. RN105107171																								
Media [Statute] On-Site Sewage Disposal																								
Enf. Coordinator Andrew Hunt																								
Violation Number	<input type="text" value="1"/>																							
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 285.3(i) and Tex. Water Code § 26.121"/>																							
Violation Description	<input type="text" value="Failed to prevent the unauthorized discharge of waste and the prohibited use of a cesspool. Specifically, during the investigation, the Respondent was discharging domestic waste into a cesspool located off-site at 819 Williams Street, Eden, Concho County, Texas."/>																							
Base Penalty				<input type="text" value="\$2,500"/>																				
>> Environmental, Property and Human Health Matrix																								
OR	<table border="1" style="margin: auto;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Release</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td></td> <td></td> <td style="text-align: center;">x</td> </tr> <tr> <td style="text-align: center;">Potential</td> <td></td> <td></td> <td></td> </tr> </table>				Harm				Major	Moderate	Minor	Release				Actual			x	Potential				Percent <input type="text" value="10%"/>
		Harm																						
		Major	Moderate	Minor																				
Release																								
Actual			x																					
Potential																								
>> Programmatic Matrix																								
	<table border="1" style="margin: auto;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Falsification</td> <td></td> <td></td> <td></td> </tr> </table>				Major	Moderate	Minor	Falsification				Percent <input type="text" value="0%"/>												
	Major	Moderate	Minor																					
Falsification																								
Matrix Notes	<input type="text" value="Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation."/>																							
Adjustment				<input type="text" value="\$2,250"/>																				
				<input type="text" value="\$250"/>																				
Violation Events																								
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="56"/>	Number of violation days																				
mark only one with an x	daily	<input type="text"/>																						
	monthly	<input type="text"/>																						
	quarterly	x																						
	semiannual	<input type="text"/>																						
	annual	<input type="text"/>																						
	single event	<input type="text"/>																						
Violation Base Penalty		<input type="text" value="\$250"/>																						
<input type="text" value="One quarterly event is recommended from date of investigation (01/10/08) to screening date (03/06/08)."/>																								
Economic Benefit (EB) for this violation			Statutory Limit Test																					
Estimated EB Amount		<input type="text" value="\$1,118"/>	Violation Final Penalty Total	<input type="text" value="\$627"/>																				
			This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$627"/>																				

Economic Benefit Worksheet

Respondent: Gilbert Espinosa

Case ID No. 35506

Reg. Ent. Reference No. RN105107171

Media: On-Site Sewage Disposal

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$5,325	25-Oct-2006	31-Oct-2008	2.0	\$36	\$717	\$753
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to connect sewer line to the City of Eden collection system. The date required is the date of initial investigation. The final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment	\$255	25-Oct-2006	6-Mar-2008	1.4	\$17	\$348	\$365
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated City of Eden sewer rates for the Site. The date required is the date of initial investigation. The final date is the screening date.

Approx. Cost of Compliance

\$5,580

TOTAL

\$1,118

Compliance History

Customer/Respondent/Owner-Operator: CN603120205 ESPINOSA, GILBERT Classification: N/A Rating: N/A
Regulated Entity: RN105107171 819 UNIT B WILLIAMS ST Classification: N/A Site Rating: N/A
ID Number(s):
Location: 819 UNIT B WILLIAMS ST, EDEN, TX, 76837
TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: February 20, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: February 20, 2003 to February 20, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Andrew Hunt Phone: 512-239-1203

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 02/12/2008 (618094)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 12/27/2006 (534779)

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 285, SubChapter A 285.3(i)

Description: Failure to comply with the state regulations of the TCEQ Water Quality, On-Site Sewage Facility (OSSF) Program under 30 TAC 285.3(i) for the unauthorized use of a cesspool.

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
GILBERT ESPINOSA;
RN105107171**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0354-OSS-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Gilbert Espinosa ("Mr. Espinosa").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Espinosa owns a residential property located at 819 Unit B Williams Street, Eden, Concho County, Texas (the "Site").
2. Mr. Espinosa has discharged waste into or adjacent to the waters of the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on January 10, 2008, a TCEQ San Angelo Regional Office investigator documented that Mr. Espinosa failed to prevent the unauthorized discharge of waste and the prohibited use of a cesspool. Specifically, during the investigation, the Mr. Espinosa was discharging domestic waste into a cesspool located off-site at 819 Williams Street, Eden, Concho County, Texas.
4. Mr. Espinosa received notice of the violation on or about February 12, 2008.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Gilbert Espinosa" (the "EDPRP") in the TCEQ Chief Clerk's office on July 1, 2008.

6. By letter dated July 1, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Espinosa with notice of the EDPRP. According to the return receipt "green card," Mr. Espinosa received notice of the EDPRP on July 3, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Espinosa received notice of the EDPRP, provided by the Executive Director. Mr. Espinosa failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Espinosa is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.054 and chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Espinosa failed to prevent the unauthorized discharge of waste and the prohibited use of a cesspool, in violation of 30 TEX. ADMIN. CODE § 285.3(i) and TEX. WATER CODE § 26.121.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Espinosa with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Espinosa failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Espinosa and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Espinosa for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of six hundred twenty-seven dollars (\$627.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Espinosa is assessed an administrative penalty in the amount of six hundred twenty-seven dollars (\$627.00) for violations of the Texas Water Code, the Texas Health and Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Espinosa's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Gilbert Espinosa; Docket No. 2008-0354-OSS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Espinosa shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Espinosa shall cease the use of the cesspool and the unauthorized discharge of waste into the cesspool located at 819 Williams Drive, Eden, Concho County, Texas; and
 - b. Within 45 days after the effective date of this Order, Mr. Espinosa shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the

possibility of fine and imprisonment for knowing violations.”

Mr. Espinosa shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Mark Newman, Waste Section Manager
Texas Commission on Environmental Quality
San Angelo Regional Office
622 South Oakes, Suite K
San Angelo, Texas 76903-7035

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Espinosa. Mr. Espinosa is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Mr. Espinosa fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Espinosa's failure to comply is not a violation of this Order. Mr. Espinosa shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Espinosa shall notify the Executive Director within seven days after Mr. Espinosa becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Espinosa shall be made in writing to the Executive Director. Extensions are not effective until Mr. Espinosa receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Espinosa if the Executive Director determines that Mr. Espinosa has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BARHAM A. RICHARD

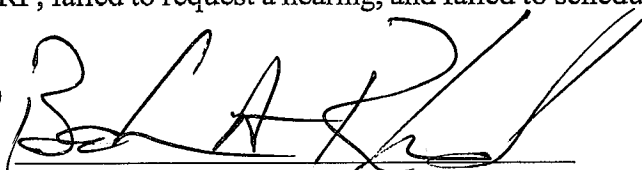
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Barham A. Richard. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Gilbert Espinosa" (the "EDPRP") was filed with the Office of the Chief Clerk on July 1, 2008.

The EDPRP was mailed to Mr. Espinosa at his last known address on July 1, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Espinosa received notice of the EDPRP on July 3, 2008, as evidenced by the signature on the card.

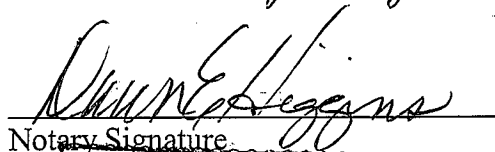
More than 20 days have elapsed since Mr. Espinosa received notice of the EDPRP. Mr. Espinosa failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."



Barham A. Richard, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 30th day of January, A.D., 2009.


Notary Signature